IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 112 OF 2005

Nisha Ramesh Biyani. ... Appellant.

Versus.

Municipal Corporation of Greater Mumbai and others. ... Respondents.

Shri Nitin Jamdar i/by M/s.Purohit & Co. for the Appellant.

Ms.Geeta Joglekar for the Respondent No.1-BMC.

Shri Raghu Wagh for the Respondents Nos.4 and 5

CORAM : ABHAY S. OKA, J.

DATED : 2nd March, 2005.

P.C.:

1. The undertaking of the Appellant is taken on record and marked "X" for identification. In the said undertaking the Appellant has stated thus:

> "I hereby unconditionally undertake to remove the disputed structure, as set out in the Impugned Notice No.KW/BFI/351/940 of 2000-2001 dated 14th August 2000 issued by the Ward Officer, K/West Ward of the Municipal Corporation of Greater Mumbai, under section 351 of the Mumbai Municipal Corporation Act, within a period of four weeks as the same is without prior permission of the Respondent No.1-Corporation.

The undertaking is accepted.

2. The challenge in this Appeal from Order is to the order dated 25th October 2004 by which Notice of Motion taken out by the Appellant/Plaintiff was dismissed. The prayer made in the Notice of Motion is for restraining the Respondents from demolishing the structure on the basis of the Notice dated 14th August 2000 bearing No.KW/BFI/351/940 of 2000-2001. By this Undertaking the Appellant has volunteered to remove the disputed structure as described in the impugned notice. In view of this undertaking tendered today and accepted by this Court, it is not necessary to entertain the Appeal.

3. Shri Jamdar the learned Counsel appearing for the Appellant submitted that there are certain adverse findings recorded by the trial Court which will come in the way of the Appellant. There is no merit in the said submission. The findings which are recorded by the learned trial Judge while disposing of the Notice of Motion are obviously tentative findings for the limited purpose of considering the prayer for interim relief. Such findings are never conclusive.

4. The learned Counsel for the Respondents Nos.4 and 5 submits that in the facts and circumstances, the Appellants should be directed to pay costs to the Respondents Nos.4 and 5. The Appellant has volunteered

to remove the disputed structure. In this view of the matter, the prayer made by the learned Counsel for the Respondents Nos.4 and 5 cannot be considered.

5. Hence this Appeal is disposed by the following order:

(i) The Undertaking of the Appellant tendered today is accepted.

(ii) For a period of four weeks from today the Respondent No.1-Corporation will not act on the impugned notice. If no compliance is made by the Appellant with the undertaking within the period of four weeks from today, the Respondent No.1-Corporation will be free to remove the disputed structure in accordance with the impugned notice.

(iii) The findings which are recorded by the trial Court in the impugned order are only tentative findings for the limited purpose of considering the prayer for interim relief. The said findings will not bind the parties at the time of trial of the suit or in any other proceedings.

(iv) The Appeal from Order is disposed of in the above terms with no order as to costs.

Judge.